

*see ab**11*
7/19/01
*[Signature]*IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIAEDWARD COSS,
Petitioner

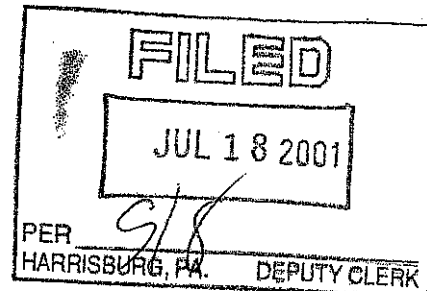
vs.

JAMES P. MORGAN, et al.,
Respondents

CIVIL ACTION NO. 1:CV-01-0878

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:



On July 10, 2001, the pro se Petitioner, Edward R. Coss, filed objections to the June 28, 2001, order of the magistrate judge which dismissed Coss's 28 U.S.C. § 2254 petition under Fed. R. Civ. P. 41(a)(2). We will consider the objections as a timely filed motion to alter or amend.

The magistrate judge issued his June 28 order in response to the Petitioner's letter, dated June 21, 2001, addressed to us which requested that the case be closed administratively and without prejudice so that the Petitioner could pursue a fourteen-year-old state postconviction petition. See Lackawanna County District Attorney v. Coss, ___ U.S. ___, 121 S.Ct. 1567, 149 L.Ed.2d 608 (2001). Instead, the magistrate judge dismissed the petition outright, although dismissal under Rule 42(a)(2) meant it was without prejudice.

Certified from the record
Date *7/18/01*

Mary E. D'Amico, Clerk

Per


George Bondre
Deputy Clerk

The Petitioner objects to the outright dismissal as not being what he had requested and if we are inclined to accept that disposition, he requests that the case be reopened so that he can litigate its merits.

We see no reason why the petition cannot be dealt with as the Petitioner requests. We will therefore vacate the magistrate judge's order and close the case in the manner that Coss has requested.

Accordingly, this 18th day of July, 2001, upon consideration of the Petitioner's objections (doc. 8), treated as a motion to alter or amend, it is ordered that:

1. The motion is granted.
2. The magistrate judge's order of June 28, 2001 is hereby vacated.
3. This action is administratively closed without prejudice and the Petitioner may request that it be reopened at the conclusion of the state-court proceedings.



William W. Caldwell
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

July 18, 2001

Re: 1:01-cv-00878 Coss v. Morgan

True and correct copies of the attached were mailed by the clerk
to the following:

Edward R. Coss Jr.
SCI-SM
CB-5970
P.O. Box 999
1120 Pike St.
Huntingdon, PA 16652

cc:		
Judge	()	() Pro Se Law Clerk
Magistrate Judge	()	() INS
U.S. Marshal	()	() Jury Clerk
Probation	()	
U.S. Attorney	()	
Atty. for Deft.	()	
Defendant	()	
Warden	()	
Bureau of Prisons	()	
Ct Reporter	()	
Ctroom Deputy	()	
Orig-Security	()	
Federal Public Defender	()	
Summons Issued	()	with N/C attached to complt. and served by: U.S. Marshal () Pltf's Attorney ()
Standard Order 93-5	()	
Order to Show Cause	()	with Petition attached & mailed certified mail to: US Atty Gen () PA Atty Gen () DA of County () Respondents ()
Bankruptcy Court	()	
Other _____	()	

MARY E. D'ANDREA, Clerk

DATE: 7/18/01

BY: BTB
Deputy Clerk